

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

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| IN RE: STORY CITY MUNICIPAL ELECTRIC UTILITIES | DOCKET NO. A-03-756 |
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ORDER ASSESSING CIVIL PENALTIES

(Issued June 29, 2004)

Story City Municipal Electric Utilities (Story City) is a public utility as defined in Iowa Code § 476.1 (2003). As such, Story City is required to file with the Utilities Board (Board) an annual report, identified as Form ME-1, pursuant to 199 IAC chapter 23. The report is to be filed on or before April 1 of each year and describes the utility's operations for the preceding calendar year. 199 IAC 23.1(2).

Story City has not filed its annual report in a timely manner at any time during the last eight years. Each year, it has been necessary for Board staff to contact Story City regarding the filing. Story City's annual report has been filed late every single year and over two months late in five out of the last eight years:

| <u>Year of Report</u> | <u>Date Filed</u> |
|-----------------------|-------------------|
| 1996 | June 13, 1997 |
| 1997 | April 9, 1998 |
| 1998 | May 26, 1999 |
| 1999 | June 12, 2000 |
| 2000 | June 21, 2001 |
| 2001 | April 30, 2002 |
| 2002 | June 5, 2003 |
| 2003 | not yet filed |

As indicated in the table above, Story City has not yet filed its annual report for calendar year 2003. The Board sent a letter to Story City on May 11, 2004, stating that the annual report was past due and that the letter constituted written notice of a specific violation of 199 IAC 23.1(2), pursuant to Iowa Code § 476.51. The letter further indicated that failure to file the required report within 30 days of the date of the letter, that is, by June 11, 2004, may result in assessment of a civil penalty of not less than \$100 per violation, with each day of the continuing violation to be considered a separate and distinct violation.

As of the date of this order, Story City has not filed its annual report for calendar year 2003. This is a violation of 199 IAC 23.1(2). The Board has given Story City written notice of this violation and 30 days to correct the violation, yet Story City is still violating 199 IAC 23.1(2). Accordingly, the Board will levy a civil penalty against Story City, beginning June 11, 2004, and ending when Story City files its annual report for calendar year 2003.

The Board does not take this action lightly. Board staff resources are wasted each year reminding Story City of this annual requirement and working with the utility to ensure the filing is ultimately made. Eight consecutive years of noncompliance without penalty is evidence of the Board's efforts to work with this utility, but the utility's failure to comply even once in that time frame, and its failure to respond to the letter of May 11, 2004, indicate a need for this action on the part of the Board.

This leaves the question of the appropriate amount of the penalty. Pursuant to § 476.51, civil penalties levied by the Board must be not less than \$100 nor more than \$2,500 per violation. In the case of a continuing violation, each day the violation continues is a separate and distinct offense. In determining the appropriate amount of the penalty, the Board will consider various factors.

The first factor the Board will consider is the nature of the utility. Story City is a municipal utility, so its customers are effectively its owners. This factor tends to weigh against a large penalty, as the burden of the penalty will tend to be borne by the customers.

Second, the Board will consider the gravity of the offense and the utility's prior record of violations. Failure to file an annual report on a timely basis is a serious offense, but it does not represent an immediate threat to the public health, safety, or welfare. However, as described above, Story City has violated 199 IAC 23.1(2) every year for the past eight years. These considerations tend to offset one another.

Finally, the Board will consider the utility's efforts toward compliance after notification of the violation. Following issuance of the May 11, 2004, letter, Story City has not made any apparent effort to comply with the annual report requirement. This factor would tend to support an enhanced penalty.

Considering all of these factors together, the Board finds that the municipal nature of the utility and the absence of any immediate threat to the public are sufficient to justify imposing only the minimum penalty of \$100 per day.

IT IS THEREFORE ORDERED:

1. Pursuant to Iowa Code § 476.51 (2003), a civil penalty of \$100 per day is levied against Story County Municipal Electric Utilities, beginning June 11, 2004, and continuing until Story County Municipal Electric Utilities files its annual report for calendar year 2003. Assuming the report is filed soon, the remittance shall be due on or before 35 days from the date of this order. It shall be made payable to the Iowa Utilities Board and forwarded to the Executive Secretary at 350 Maple Street, Des Moines, Iowa 50319-0069.

2. If the report has not been filed within 35 days of the date of this order, Story City shall make an initial civil penalty payment of \$3,500 and the civil penalty shall continue to accrue at the rate of \$100 per day until the annual report is filed.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 29th day of June, 2004.